

FACT SHEET

Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) North Dakota General Permit No. NDR04-0000

Issuance

Background

The general permit is being issued for storm water discharges from small Municipal Separate Storm Sewer Systems (MS4s) in response to the EPA's Storm Water "Phase II" Final Rule published on December 8, 1999 (64 FR68722). The rule requires the Department, as the delegated permitting authority, to issue permits for discharges from certain small MS4s.

The primary goal of this permit is to restore and maintain the chemical, physical, and biological integrity of waters of the state through management and treatment of urban storm water runoff. This is accomplished by management of MS4s through a Storm Water Pollution Prevention Program. The purpose is to maintain water quality standards where there is compliance, and help bring waters that do not meet water quality standards into attainment.

General permits provide a streamline means to cover similar discharges that are required to implement virtually the same type of controls such as those required for regulated small MS4s. The general permit requires the development of a storm water pollution prevention program aimed at minimizing the impacts on receiving waters from MS4 discharges.

Authorization and Limitations

This permit authorizes discharges of storm water from Small Municipal Separate Storm Sewer Systems as defined in 40 CFR 122.26 (b)(16). The permit also authorizes storm water discharges from fleet maintenance, runoff from wastewater treatment plants, and construction activities involving less than 5 acres conducted as part of municipal infrastructure operation.

Limitations on coverage include:

1. This permit does not authorize discharges other than storm water. Non-storm water discharges may include: combined sewer overflow, noncontact cooling water, sewage, wash water, scrubber water, spills, oil, hazardous substances, fill, commercial equipment/vehicle cleaning and maintenance wastewater. A separate NPDES permit may be required for these discharges.
2. This permit does not authorize the discharge of storm water when a separate NPDES permit is required for these activities. For example, while storm water from industrial activity or construction activity may be discharged from an MS4 with authorized storm water discharges, this permit does not replace or satisfy any other permits required for those discharges.
3. This permit does not authorize discharges from MS4s operated independently by other entities within or connected to the system described in an application. Authorization to discharge under this permit applies only to the storm sewer system (or portions of a system) operated and described in the application.

4. This permit does not authorize new or expanded discharges unless other environmental review requirements are met.

A review and determination has been made in accordance with Appendix IV of the North Dakota Standards of Water Quality (NDAC 33-16-02) for activities that would result in a new or expanded source of pollutants to waters of the state. The project applicant is obligated to provide information about the affected water body and the proposed activity as part of the review process. The review requirements to determine that an activity will maintain and protect all uses and the water quality necessary to support the uses of the water body vary with the classification of the water body.

This permit does not replace or satisfy any environmental review requirements, such as the National Environmental Policy Act (NEPA). The applicant must complete any environmental review required by law, including any required Environmental Assessment Work Sheets or Environmental Impact Statements, Federal environmental review, or other required review.

This permit does not replace or satisfy any review requirements for Threatened or Endangered species, for discharges whose direct, indirect, interrelated, interconnected, or independent impacts would jeopardize a listed endangered or threatened species or adversely modify a designated critical habitat. The applicant must conduct any required review and coordinate with appropriate agencies for any project with the potential of affecting threatened or endangered species, or their critical habitat.

This permit does not replace or satisfy any review requirements for Historic or Archeological sites, for discharges which adversely affect properties listed or eligible for listing in the National Register of Historic Places or affecting known or discovered archeological sites. The applicant must be in compliance with National Historic Preservation Act and conduct all required review and coordination related to historic preservation, including significant anthropological sites and any burial sites, with the appropriate agency(s).

Obtaining Coverage

In order for storm water discharges from Small Municipal Separate Storm Sewer Systems to be authorized to discharge under this general permit, a discharger must submit an application with a summary of the Storm Water Pollution Prevention Program.

The Application shall contain the following information:

1. The street address, and the name of the owner, agency or person with operational control of the MS4.
2. The name, address, and telephone number of the person responsible for overall permit compliance.
3. A brief description of the location of the MS4.
4. The name or general description of the water body(s), or other MS4s, that receive storm water from your MS4.

5. Provide the location of transportation facilities with vehicle maintenance activities, public works maintenance yards and wastewater treatment works with a design flow of 1.0 mgd or greater.
6. Provide the location and description of systems operated by other public entities within the MS4.

A summary of the Storm Water Pollution Prevention Program for implementing the permit shall be attached to the application, including:

1. The Best Management Practices (BMPs) that will be implemented for each of the required storm water minimum control measures;
2. The measurable goals for the BMPs that are planned for implementation, including as appropriate, a description of the planned actions, timing and frequency of actions, and milestones;
3. Estimated schedule(s) (months, years) in which the discharger will implement each Best Management Practice; and
4. Person(s) responsible for implementing and/or coordinating each component of the Phase II Storm Water Program. This should be the person(s) the Department should contact regarding the overall program or the particular components.

Where the ownership or operational control of the MS4 changes significantly, or where a new owner of the MS4 is added after the submittal of an application under Part III, a new application must be submitted. This is not intended to require a new application due to the election of new municipal officials. Changes in officials responsible for portions of the program would be updated via the annual reports.

Unless notified by the Department to the contrary, dischargers who submit a complete application in accordance with the requirements of this permit are authorized to discharge storm water from Small Municipal Separate Storm Sewer Systems under the terms and conditions of this permit, on the issuance date of this permit. If the application is received after the issuance date, discharge is authorized on the date the application is received by the Department.

The Department may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the application or other information. Also dischargers may request individual permits by submitting an application in accordance with 40 CFR 122.33 and a description of why an individual permit would be necessary.

Storm Water Pollution Prevention Program

Dischargers must develop, implement and enforce a Storm Water Pollution Prevention (SWPP) Program designed to reduce the discharge of pollutants from small municipal separate storm sewer systems, to the maximum extent practicable (MEP) to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The SWPP Program will consist of a combination of Best Management Practices (BMPs), including education, maintenance, control techniques, system design and engineering methods, and such other provisions as determined to be appropriate, to meet the minimum requirements of this permit.

The Storm Water Pollution Prevention (SWPP) Program must address the six minimum control measures outlined in 40 CFR 122.34. The permit includes the minimum controls identified for the six control measures. The Minimum Control Measures are:

- Public education and outreach,
- Public participation/involvement,
- Illicit discharge detection and elimination,
- Construction site runoff control,
- Post-construction runoff control, and
- Pollution prevention/good housekeeping for municipal operations.

Implementation of one or more of the minimum measures may be shared between entities. The rule provides that a facility may cooperate on all or part of the SWPP program developed by another entity (40 CFR 122.35). This option is particularly beneficial for operators that serve low populations, have limited resources, or adjacent to a regulated MS4. The facility will remain liable for compliance with the permit within their jurisdiction. The agreement outlining such an arrangement must be maintained as part of the description of the storm water management program.

The SWPP Program must include BMPs that control or reduce pollutants, as appropriate for a community. In the development of BMPs for a Storm Water Pollution Prevention Program, the operator must consider the sources of pollutants, the potentially polluting activities being conducted in the watershed, and the sensitivity of the receiving waters. For each minimum control measure, there shall be a description of the BMPs for the measure, responsible department in charge, an implementation schedule and measurable goals that will be used to determine the success or benefits of the BMPs.

If the MS4 discharges to a water of the state that appears on the current USEPA-approved list of impaired waters under Section 303(d) of the Clean Water Act, the discharger must review whether changes may be warranted to the SWPP Program to reduce the impact of the discharge. If an implementation plan has been developed for a USEPA-approved TMDL(s), the adequacy of the SWPP Program must be reviewed to meet the TMDL's load allocation set for storm water sources. This review must include assessment of: 1) the MS4's contribution to the overall storm water allocation, 2) the MS4's selected BMPs and their effectiveness in meeting the TMDL's allocation goal, and 3) whether the time line for putting BMPs in place is consistent with the schedule of the TMDL implementation plan. If the Storm Water Pollution Prevention Program is not meeting the applicable requirements, schedules and objectives of the TMDL implementation plan, the discharger will be required to modify the SWPP, as appropriate.

An acceptably developed Storm Water Pollution Prevention Program will address BMP elements required in the state's General Permits addressing industrial storm water discharges from transportation facilities, wastewater treatment facilities with design flows of 1.0 mgd or greater and construction involving 1 to 5 acres. Thus the state will not require MS4 permittees to obtain a separate permit for those activities within the area covered by their MS4 SWPP Program. The preamble to the rule discusses the possible use of combination permits to address sources exempted under the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 (64 FR 68780). While there are some additional information requirements in this permit to address the additional types of storm water, the Department believes that by including the sources in this permit will eliminate some duplication in paperwork and confusion in managing separate permits for activities commonly considered functions of municipal entities.

The Storm Water Pollution Prevention Program shall become an enforceable part of this permit upon receipt of the complete application for coverage under this permit by the Department. Modifications to the SWPP Program that are required or allowed by this permit shall also become enforceable provisions.

Systems to be Covered

The phase II rule includes four provisions by which a small MS4 may be designated as a “regulated” small MS4 and thus require permit coverage. A system may be designated as “regulated” by any of the following:

- 1) Automatic designation, small MS4s located within the boundaries of a Census Bureau-defined Urbanized Area based on the latest decennial census;
- 2) Potential designation by permit authority, small MS4s that are located outside of UAs determined to result in or have the potential to result in significant water quality impacts;
- 3) Contributes to an interconnected “regulated” MS4, small MS4s that contribute substantially to pollutant loadings of a physically interconnected MS4 regulated by the NPDES storm water program; or
- 4) Petition for designation, small MS4s may be designated following a final determination by the Department on a petition, or request, for designation.

A description of regulated MS4s and designation criteria for North Dakota is provided in a separate Department of Health policy document. The criteria follows that required by the phase II rule. However, the rule directs the state to use its judgement on whether to require permits for certain entities and in developing designation criteria that would be applied to MS4s outside an urbanized area. The rationale for the state’s input for discretionary parts of the criteria are noted in this fact sheet.

Small MS4s located in a UA are automatically designated at 40 CFR 122.32. The definition of small MS4 includes systems serving state or federal complexes such as colleges and highways in addition to the typical municipal entities such as cities and towns. The definition also indicates that a small MS4 is a system owned by a public body having jurisdiction over the disposal of storm water and other wastes. A reference list of governmental entities located within an urbanized area is provided in appendix 6 of the preamble to the phase II rule. The list identifies several townships in North Dakota as potentially operating MS4s subject to automatic coverage. The Department is not requiring permits from the townships on the list, or the others that are partly in UAs but were not listed. In North Dakota townships are not normally associated with the organization and operation of sewer systems. While townships normally construct and maintain roads within their boundaries, the North Dakota Century Code (NDCC Chapt. 58-12-05) indicates that township road superintendents are, by virtue of their position, deputies of the county superintendent. The century code chapter pertaining to townships (NDCC Chapt. 58) does not elaborate on any other duties regarding the operation sewer systems.

The Department is not requiring permit applications for systems serving state or federal complexes (such as colleges, military facilities, prisons, etc.) in UA’s unless it is determined that the system is operated independently of the city in which it is located. While such facilities would have piping and other conveyances to drain storm water, the storm water is generally routed to the city’s system. The Department is not aware of situations where the city would not have the ability to

regulate, to some extent, the disposal of storm water within their city by specifying restrictions on connections and contributions to their system. The preamble to the rule indicated, in regard to situations with small public complexes (64 FR 68749), that the permit authority would have to use its best judgement as to the nature of the complex and its storm water conveyance system. It also notes that the permit authority should also consider whether the public complex cooperates with its municipality's efforts to implement their storm water management program. Since the city is in the best position to identify the extent of its jurisdiction and cooperation with a public complex, the Department will rely on the city's (or county's) judgement and require permits for facilities that are identified as operating independently of their control and/or do not cooperate with their storm water efforts.

The Phase II Final Rule requires the Department as the permitting authority to develop a set of designation criteria and apply them to MS4s outside of urbanized areas (40 CFR 123.35[b]). MS4s serving jurisdictions with a population of at least 10,000 and with a population density of at least 1,000 people per square mile must be evaluated prior to December 9, 2002 (40 CFR 123.35[b][2]&[3]). The Department can apply the criteria to make additional designations, as appropriate, at any time.

All cities with a population of 10,000 or greater have been designated for coverage. The MS4s are required to obtain a permit unless the operator of the MS4 conclusively demonstrates to the Department that their discharges do not contribute or have the potential to contribute to the violation of a water quality standard. The applications for coverage under the general permit will be due by June 10, 2003, 180 days after the finalization of the permit and the accompanying policy.

The designation criteria is designed to consider whether storm water discharges from a small MS4 results, or potentially results, in exceedances of water quality standards, including impairment of designated uses, and/or adverse habitat or biological impacts. The Department's designation criteria applies a scoring system to the considerations identified by the EPA in the Phase II rule proposal (40 CFR 123.35[b][1]). The rule provided little guidance on how to balance the considerations. A scoring system was developed as a tool to evaluate the potential impacts from MS4s on a reasonably consistent basis and require permits where appropriate. As a rule, MS4s that score 25 or more will be designated for permit coverage and MS4s that score less than 25 will not be designated. The score of 25 is roughly equates to the break point between a MS4 of 10,000 that would qualify for a waiver and one that would not under the provisions identified in the rule. The score obtained may not always adequately characterize the conditions of a specific MS4 and thus the Department must exercise its judgement in determining if all factors have been considered and considered correctly.

The Department will not be granting waivers for MS4's prior to the December 9, 2002 deadline. The water quality information on the MS4 discharges and/or detail of "total maximum daily load" (TMDL) information available for candidate MS4s appeared insufficient to meet the criteria described in the rule (40 CFR 123.35). Several small (less than 1000 in population) MS4s appear to be located in the Fargo UA which would drain to the Red River (directly or via the City of Fargo) in or just above a reach listed on the state's 303d list (impaired waters). The city of Lincoln with a population of more than 1000, is located in the Bismarck UA and would drain to Apple Creek.

Monitoring Reports and Expiration Date

An annual report, on the implementation of the SWPP Program shall be submitted by March 31 of each year, or on another date if established by the Department. The reporting period is intended to follow calendar years. However slight adjustments to fit the other obligations of the municipality will be accepted.

The proposed expiration date for this permit is December 31, 2007, provided the permit is issued with a January 1, 2003 effective date. The permit term will not exceed 5 years.

Public Notification

The Department proposes to publish a 30-day notice of the proposed renewal of this general permit in the Bismarck Tribune, the official newspaper of the capital city and in the newspapers of several other larger cities located regionally throughout the state. The notice will also be mailed to the Department's Public Notice mailing list. Should there be adequate interest, a public hearing will be scheduled.

RK
September 10, 2002